

the U.S.-Guatemala route solely through the resale of an unaffiliated U.S. facilities-based carrier's international switched services. Therefore Telmex USA, in its notification, requested that it continue to be regulated as non-dominant on the U.S.-Guatemala route, as permitted under section 63.10(a)(4) of the Commission's rules.⁶ In response to the oppositions filed by other parties however,⁷ Telmex USA represented that it would willingly accept dominant carrier regulation on the U.S.-Guatemala route in order to assuage concerns raised in the pleadings.⁸

II. DISCUSSION

3. Under the rules adopted in the *Foreign Participation Order*, we regulate U.S. international carriers as "dominant" on routes where an affiliated foreign carrier has sufficient market power to affect competition adversely in the U.S. market.⁹ A U.S. carrier is presumptively classified as non-dominant on an affiliated route if the authorized carrier demonstrates that its foreign affiliate lacks market power,¹⁰ or that the authorized carrier solely provides service through the resale of an unaffiliated U.S. facilities-based carrier's international switched services on the affiliated route.¹¹

4. Telmex USA does not assert that Telgua lacks market power in Guatemala; therefore, a lack of market power would not be the basis for retaining non-dominant classification on the U.S.-Guatemala route. Although the provision of services on the U.S.-Guatemala route through the resale of unaffiliated U.S.-authorized carriers would in most circumstances be sufficient to apply a presumption of non-dominant carrier classification on the U.S.-Guatemala route, we find that there are concerns unique to this situation that overcome the presumption.¹² We have considered the arguments

⁶ *Telmex USA Notification*; 47 C.F.R. §63.10 (a)(4).

⁷ The notification appeared on a Public Notice released Jan. 31, 2000. In the Public Notice, the International Bureau granted, pursuant to 47 C.F.R. §1.3, Telmex USA's request for waiver of the sixty-day prior notification period in section 63.11(a) of the Commission's rules by reducing the notification period to forty-five days.

⁸ *In the Matter of Telmex International, Inc.: Notification of Foreign Affiliation Pursuant to 47 C.F.R. Section 63.11(a)*, Response of Telmex International, Inc. (filed Feb. 22, 2000) (*Telmex Response*).

⁹ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket Nos. 97-142 and 95-22, Report and Order on reconsideration, 12 FCC Rcd 23,891 (1997) (*Foreign Participation Order*), petition for recon. pending. *Id.* at 23,987-24,022, paras. 215-292.

¹⁰ 47 C.F.R. §63.10(a)(3). An authorized carrier seeking non-dominant regulatory treatment under this presumption must demonstrate that its foreign affiliate lacks fifty-percent (50%) market share in the international transport facilities or services, inter-city facilities or services, and the local access facilities or services markets on the foreign end of the route.

¹¹ 47 C.F.R. §63.10(a)(4).

¹² *Id.*

raised by other U.S. carriers of alleged anticompetitive practices occurring on the U.S.-Guatemala route¹³ along with the representation of Telmex USA in response to these allegations that it would not object to being classified as dominant on the U.S.-Guatemala route.¹⁴ We find that it is more likely than not that imposing dominant carrier regulation on Telmex USA for this route may assist the Commission in monitoring and detecting potential violations on the U.S.-Guatemala route that may harm the U.S. international telecommunications market and U.S. consumers. Therefore, we impose dominant carrier regulation pursuant to sections 63.11(e)(1) and 63.10 of the Commission's rules on Telmex USA for its provision of service on the U.S.-Guatemala route.

III. ORDERING CLAUSES

5. Accordingly, IT IS ORDERED, pursuant to Section 214 of the Act, 47 U.S.C. §214, and Sections 63.10 and 63.11(e)(1) of the Commission's rules, 47 C.F.R. §§63.10 and 63.11(e)(1), that Telmex USA shall be regulated as a dominant carrier on the U.S.-Guatemala route and shall comply with the requirements of paragraph (c) of that section.

¹³ See e.g., *In the Matter of Telmex International, Inc.: Notification of Foreign Affiliation Pursuant to 47 C.F.R. Section 63.11(a)*, Americatel Corporation (filed Feb. 14, 2000); *In the Matter of Telmex International, Inc.: Notification of Foreign Affiliation Pursuant to 47 C.F.R. Section 63.11(a)*, Comments of AT&T Corporation (filed Feb. 14, 2000); *In the Matter of Telmex International, Inc.: Notification of Foreign Affiliation Pursuant to 47 C.F.R. Section 63.11(a)*, Comments of Elite Telecommunications, Inc. (filed Feb. 14, 2000); *In the Matter of Telmex International, Inc.: Notification of Foreign Affiliation Pursuant to 47 C.F.R. Section 63.11(a)*, Comments of International Telecommunications, Inc. (filed Feb. 14, 2000); *In the Matter of Telmex International, Inc.: Notification of Foreign Affiliation Pursuant to 47 C.F.R. Section 63.11(a)*, Comments of MCI WorldCom, Inc. (filed Feb. 14, 2000).

¹⁴ It is inappropriate for the Commission to use the fact that there is a pending Notice of Apparent Liability in other Commission proceedings to prejudice the person to whom such notice was issued, prior to a forfeiture being paid or a final court order of payment. See 47 U.S.C. §504(c). However, the Commission may consider uncontested facts underlying such proceedings in appropriate circumstances. With respect to Telmex USA's parent company, the Commission is aware of the uncontested fact that on July 26, 1999, Telmex ceased provisioning of private lines and circuits in Mexico to Avantel and Alestra, the Mexican affiliates of MCI WorldCom and AT&T respectively. Telmex USA subsequently notified the Commission in a pleading dated February 14, 2000 that Telmex has resumed provisioning of the private lines and circuits in question. See *In the Matter of Telmex/Sprint Communications, L.L.C.*, IB Docket No. ITC-97-127, Letter from Gary Epstein, Counsel to Telmex International Ventures USA, Inc. to Donald Abelson, Chief, International Bureau, September 29, 1999 at 2; *In the Matter of Telmex International Ventures USA, Inc. Notice of Apparent Liability for Forfeiture*, Response of Telmex International Ventures USA, Inc. to Notice of Apparent Liability for Forfeiture (filed Feb. 14, 2000). This conduct, along with the anticompetitive allegations before us and Telmex USA's consent to dominant carrier regulation on the U.S.-Guatemala route in response to the allegations, persuades us in this case to err on the side of caution and impose dominant carrier safeguards on this route. Our willingness here to accept the proffered solution is not to be considered a prejudgment of how we might handle future notifications.

6. This Order is issued under Section 0.261 of the Commission's rules, 47 C.F.R. §0.261, and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§1.106, 1.115, may be filed within 30 days of the date of public notice of this order (*see* 47 C.F.R. §1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief, International Bureau